

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2270 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

BHUPATBHAI DURLABHBHAI PATEL

Versus

GEOLOGIST VIZ. CHOWDHARI 3RD SPECIAL LAND ACQUISITION

Appearance:

MR BA SURTI for Petitioner

MR KT DAVE, AGP for Respondents

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 18/08/2000

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner, who is holder of lease for a quarry in the river bed of Tapi since April, 1996, has challenged the order dated 10.3.2000 (Annexure "B") passed by the Geologist, respondent No. 1 herein, restraining the petitioner from using the road from the gamtal of village Choryasi, Taluka Kamrej for carrying the mineral being extracted by the petitioner.

2. The learned counsel for the petitioner submits

that the impugned order has been passed on account of the objections raised by the village people, but the village people have also filed Regular Civil Suit No. 11/98 claiming the same relief against the petitioner, but the Civil Court has rejected their interim injunction application on 7.5.1999 and thereafter the said village people have preferred Misc. Civil Appeal No. 8799 in the District Court at Surat but the District Court has not granted any ad-interim injunction against the petitioner, but only the order of status quo is passed and thereafter at the instance of the village people, respondent No. 1 has passed the impugned order.

It is submitted that when the parties are already getting their grievance adjudicated before the Civil Court, the Geologist ought not to have issued such a prohibitory order which would result into stoppage of the petitioner's business and that but for the ad-interim stay granted by this Court on 12.5.2000 in Civil Application No. 3588/2000, the petitioner would not have been able to do his business.

3. Mr KT Dave, learned AGP appearing for the respondents is not in a position to dispute that the impugned order dated 10.3.2000 has been passed on account of the objections lodged by the village people. He is also not in a position to state the ground on which the village people are objecting.

4. Having heard the learned counsel for the parties and considering the fact that the dispute between the village people and the petitioner is already subject matter of Reg. civil suit No. 11/98 and also Misc. Civil Appeal No. 87/99 and considering the fact that so far no ad-interim/interim injunction is granted in favour of the village people and against the petitioner, as stated by the learned counsel for the petitioner at the hearing today, it would be just and proper to direct that the parties' rights shall be governed by the decision of the civil Court and that till the District Court decides Misc. Civil Appeal No. 87/99, the petitioner shall be permitted to use the disputed road which the petitioner was earlier using prior to the issuance of the order dated 10.3.2000. The said order dated 10.3.2000 (Annexure "B") of the Geologist, respondent No. 1 herein, is hereby quashed and set aside subject to the clarification that the parties shall abide by the decision of the civil Court and the orders which may be passed by the District Court in Misc. Civil Appeal No. 87/99.

The District Court shall hear and decide Misc.
Civil Appeal No. 87/99 as expeditiously as possible and
in any case by 30.9.2000, without being influenced by any
observations made in this order.

Writ to be sent down to the District Court, Surat
forthwith.

Rule is made absolute to the aforesaid extent.
There shall be no order as to costs.

August 18, 2000 (M.S. Shah, J.)
sundar/-